IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-11-2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.4050 of 2007

R.Bhaskaran .. Petitioner.

Versus

The National Stock Exchange of India Ltd.,
7th Floor, Arihant NITCO Park,
90, Dr.Radhakrishnan Road,
Chennai-600 004. .. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus and for the reliefs as stated therein.

For petitioner : Mr.R.Bhaskaran
(Party-in Person)

For respondent : Mr.S.Thiruvenkatasamy

O R D E R

Heard Mr.R.Bhaskaran (Party-in Person), the petitioner in the above writ petition and Mr.S.Thiruvenkatasamy, the learned counsel appearing on behalf of the respondent.

2. The writ petition has been filed, praying for a writ of mandamus to direct the National Stock Exchange of India Limited, Chennai, to comply with the directions of the Securities and Exchange Board of India, issued in their letter, dated 24.2.2004, and to take appropriate penal action against the concerned stock brokers, namely, M/s.Paterson and Co., Chennai.

3. It is submitted by the petitioner that he had purchased 200 shares of M/s.Saw Pipes Limited (later changed as M/s.The Jindal Pipes Ltd.) and the shares had been sent to the said company to transfer the same in accordance with the established procedure, by following the necessary formalities. However, the company had intimated the petitioner, after a very long delay, that the broker, who had sold the shares to the petitioner had obtained a stay order from the Court on the ground that the

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person who had sold the shares was not legally entitled to sell them. The petitioner has further stated that though the petitioner ought to have delivered the bad shares to the broker, namely, M/s.Patterson and Co., Chennai within one year from the date of its return from the Company, expressing its inability to transfer the shares, he had not done so due to unavoidable reasons. Therefore, the petitioner had approached the National Stock Exchange of India Limited, Chennai, to take necessary action against the share broker for his fraudulent act and to invoke the penal provisions for imposing appropriate penalty on him. However, the National Stock Exchange of India had failed to do so. Thereafter, the petitioner had appealed to the Securities and Exchange Board of India, which had directed the National Stock Exchange of India to initiate action against the concerned stock broker. The National Stock Exchange of India, Limited has not complied with the directions issued by the Securities and Exchange Board of India in their letter, dated 24.12.2004, till date. Hence, the petitioner has filed the present writ petition.

4. In the counter affidavit filed on behalf of the respondent, it has been submitted that the writ petition is liable to be dismissed inlimine for non-joinder of necessary parties and for latches, as the writ petition has been filed with an inordinate delay of nearly three years. The petitioner had not impleaded the trading member, namely, M/s.Patco Investments and Consultancy Services (P) Ltd. and the regulating authority, namely, the Securities and Exchange Board of India, as parties to the writ petition. It has been further stated that the respondent vide its letter, dated 30.3.2004, had placed the facts of the case before the Securities and Exchange Board of India and had been further corresponding with it with regard to the grievance of the petitioner. Further, the petitioner had not approached this Court with clean hands, as he has suppressed the material facts relating to the matter. It has also been stated that Section 23(L) of the Securities Contracts (Regulation) Act, 1956, provides for an appeal against the order or decision of the recognised Stock Exchange or the adjudicating Officer before the Securities Appellate Tribunal. Without prejudice to the preliminary objections raised, it has also been submitted that the respondent is a stock exchange duly recognized by the Central Government under Section 4 of the Securities Contracts (Regulation) Act, 1956. The respondent is a company duly incorporated under the Companies Act, 1956 with the object of supporting, developing and promoting a healthy securities market in the best interest of the investor and the general public and the economy of the country.

5. With regard to the dealing in securities, certain schemes have been specified by the Securities and Exchange Board of India, including the good/bad delivery norms. The respondent had received a circular from the Secondary Market Department of

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Securities and Exchange Board of India, bearing No.SMD/POLICY/CIR/7-97, dated 16th April 1997. As per Entry No.97 of the Circular issued with regard to good/bad delivery norms, the validity period of a company objection by the last buying broker is to be notified to the respondent/introducing broker within 12 months from the date of the objection memo. In view of the said prescription, upon the expiry of the validity period of the company objection, the company objection cannot be lodged by the Receiving Member against the Introducing Member. Thus, the remedy available with the Receiving Member becomes time barred. However, the respondent had taken up the cause of the petitioner and had been communicating with the Securities and Exchange Board of India to redress the grievance of the petitioner to the extent possible. Several communications have been exchanged between the respondent and Securities and Exchange Board of India, with regard to the grievance of the petitioner, as enclosed in the typed set of papers filed on behalf of the respondent. Since the petitioner had approached the Securities and Exchange Board of India, directly, the Securities Exchange Board of India has written a letter, dated 15.04.2004, in reference No.SRO/SMD/SMDD/EIF/1998/6/2293, directing the respondent to look into the issue of delivery of shares in detail for an effective redressal of the petitioner's complaint. Thereafter, since the petitioner had come before this Court by way of a writ petition, the matter had not been pursued further by the respondent.

6. The learned counsel appearing for the respondent had further submitted that the respondent, if so directed by this Court, would look into the matter further and send a communication to The Securities and Exchange Board of India, with the necessary details in pursuance of The Securities and Exchange Board of India's letter, dated 15.04.2004.

7. On such submission being made, this Court is of the considered view that it would suffice if the respondent is directed to send an appropriate reply to the Securities and Exchange Board of India, in reply to its letter, dated 15.04.2004, within a stipulated period.

8. Accordingly, the respondent is directed to send an appropriate reply to the Securities and Exchange Board of India, with the necessary details as required by the Securities and Exchange Board of India, vide its letter, dated 15.04.2004, within a period of four weeks from the date of receipt of a copy of this order.

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With the above directions, the writ petition is disposed of. No costs.

Csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The National Stock Exchange of India Ltd.,
7th Floor, Arihant NITCO Park,
90, Dr.Radhakrishnan Road,
Chennai-600 004.

+ 1 cc to Mr. S. Thiruvenkatasamy, Advocate, SR No.69327

+ 1 cc to Mr. Baskaran Party in Person, Advocate, SR No.69423

RA(CO)
SR/3.12.2007

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